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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN, NC 28562

EXAMINER	
ELOSHWAY, NIKI MARINA	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/579,940
Filing Date: May 19, 2006
Appellant(s): FEINAUER ET AL.

Andre Pallapies (Reg. No. 62,246)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 19, 2011 appealing from the Office action mailed March 2, 2011.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 10-29, 31 and 33

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

EP0,437,930	CUR et al.	7-1991
5,512,345	TSUTSUMI	4-1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

(A) Claims 10-12, 17-25 and 27-29 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Casoli et al. (EP 1,335,171) in view of Cur et al. (EP 0,437,930). Casoli et al. disclose the claimed invention except for the intermediate space. Casoli et al. teach a single evacuated insulation space between the outer shell and the inner liner. Cur et al. teach that it is known to provide multiple compartments/spaces between the outer shell and inner liner. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the housing of Casoli et al. with an intermediate space between the space K of Casoli et al. and the inner liner 14 of Casoli et al., as taught by Cur et al., in order to improve the insulative properties of the housing.

(B) Claims 13-16, 26, 31 and 33 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Casoli et al. (EP 1,335,171) in view of Cur et al. (EP 0,437,930), as applied to claims 10, 19 and 27 above, and further in view of Tsutsumi et al. (U.S. 5,512,345). The modified housing of Casoli et al. discloses the claimed invention except for the aperture, holder and attachment device. Tsutsumi et al. teaches that it is known to provide a housing with an aperture for a cable, a holder for attachments and an attachment device (see figures 1 and 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified housing of Casoli et al. with the aperture, holder and attachment device of Tsutsumi et al., in order to provide the housing with the mechanical elements which cool the housing cavity.

Tsutsumi et al. teach an aperture though which 13 extends. Additionally, a cable must be provided in Tsutsumi et al. to provide the power for the mechanical elements, such as heater 14 and fan motor 16. The holder for internal attachments is shown in figure 7, and can be element 18. The

attachment device is comprised of a first flange at 19, a second flange at 21 or 18, a spacer 22 and a holder portion 20.

(10) Response to Argument

(A) Claims 10-12, 17-25 and 27-29 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Casoli et al. (EP 1,335,171) in view of Cur et al. (EP 0,437,930).

Appellant argues that the proposed modification of Casoli is contrary to the teachings of Casoli. The Examiner disagrees with this position. The Casoli reference is directed to a refrigerator housing which uses holes or channels in the insulation material 20 for an easier and more effective evacuation process to create the vacuum conditions in the air space K. Cur teaches the use of panels having a plurality of panels. The proposed modification of the Casoli invention calls for the addition of an intermediate insulation cavity, as taught by Cur. It is the Examiner's position that the addition of an intermediate insulation cavity would be beneficial to the Casoli invention because it would improve the strength of the panel and increase the insulative characteristics. The compartments my be evacuated simultaneously still using a simple and economic manner, discussed by Casoli.

Regarding the modification in the rejection, Casoli teaches a single evacuation space between the inner and outer walls. Cur teaches a plurality of evacuation spaces between the inner and outer walls. When the single evacuation space of Casoli is replaced by a plurality of evacuation spaces, as taught by Cur, the insulation body is formed by walls (such as 30-32 of Cur) and the insulation body is inserted between the inner and outer walls 14 and 16 of Casoli. Therefore, the inner wall 14 is separate from the walls of the insulation body.

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413,

208 USPQ 871 (CCPA 1981). The combined teachings of Casoli and Cur would suggest to one having ordinary skill in the art that intermediate compartments may be used to improve the insulative properties of the structure and to protect inner compartments. These intermediate compartments are enclosed by intermediate walls. The primary reference of Casoli teaches inner and outer walls of the structure that receive the insulation therebetween.

Where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing *KSR v. Teleflex*, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)). The multi compartment insulation of Cur is used as a substitution for the single compartment structure of Casoli.

Regarding claim 19, it is the Examiner's position that the inner wall 14 of Casoli is mounted to the intermediate wall (a wall of the intermediate insulation cavity of Cur), to the degree set forth in the claim because they are fixedly secured to each other.

The issues regarding claims 11, 12, 17, 18, 20-25 and 27-29 have been addressed above.

(B) Claims 13-16, 26, 31 and 33 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Casoli et al. (EP 1,335,171) in view of Cur et al. (EP 0,437,930), as applied to claims 10, 19 and 27 above, and further in view of Tsutsumi et al. (U.S. 5,512,345).

Regarding claims 13-16, 26, 31 and 33, Appellant argues the combination of Casoli and Cur. These arguments have been addressed above.

Regarding claims 15 and 16, Appellant argues that Tsutsumi does not show any holder attached to any aperture. The Examiner disagrees with this position. Figure 7 of Tsutsumi clearly shows a housing which may be considered a holder to the degree set forth in claim 15. The holder is mounted via 20 through an aperture in the inner wall.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Niki M. Eloshway/

Niki M. Eloshway
AU 3728

Conferees:

/Anthony Stashick/
Supervisory Patent Examiner, Art Unit 3781

/NATHAN J NEWHOUSE/
Supervisory Patent Examiner, Art Unit 3782